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No. 406.
Brief of Lindsay for Appellant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 406.

Filed Dec. 1, 1900.

CHARLES F. W. NEELY, APPELLANT,

vs.

WILLIAM HENKEL, UNITED STATES MARSHAL IN AND FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

MEMORANDUM SUBMITTED BY THE APPELLANT.

JOHN D. LINDSAY,
Counsel for the Appellant,
31 Nassau Street, Manhattan,
New York, N. Y.

30152

Supreme Court of the United States,

OCTOBER TERM, 1900.

No. 406.

CHARLES F. W. NEELY, Appellant,

vs.

WILLIAM HENKEL, United States Marshal in and for the Southern District of New York.

MEMORANDUM SUBMITTED BY THE APPELLANT.

This is an appeal from a final order of the Circuit Court of the United States in and for the Southern District of New York, entered August 20, 1900, denying a second application by the appellant for a writ of *habeas corpus*, whereby he sought to secure his release from the custody of the appellee in the proceedings instituted under the Act of June 6, 1900 (31 Stat., 656), for his extradition to Cuba.

The record shows precisely the same state of facts as that developed in No. 387, with these differences:

In place of the 7th subdivision of Paragraph III. of the petition in 387 (p. 2), the petition in this case contains the following averments:

> "7. That at the conclusion of the said proceedings, to wit, on the said 24th day of July, the said Circuit Judge remanded your petitioner to the custody of the said United States

Marshal under the said warrants, pending and until his decision of the question whether the evidence so introduced before him, as aforesaid, established probable cause that your petitioner was guilty of the offenses charged in the said complaints, or of either of the offenses so charged, and thereupon placed upon each of the said warrants an endorsement in the following language, to wit:

"Remanded till decision July 24, 1900. E. H. LACOMBE, *U. S. C. J.*"

8. That hereafter, to wit, on the 8th day of August, 1900, the said Circuit Judge handed down an opinion, a copy of which is hereto annexed, marked 'E,' but that no decision in the premises has yet been entered.

9. That the evidence in the said proceedings under the said warrants before the said Circuit Judge has not yet been certified to the Secretary of State, and that no order has yet been issued in the said proceeding for your petitioner's return and surrender to the authorities in control in Cuba for trial under the laws there in force, but that your petitioner is now virtually imprisoned and restrained of his liberty by the said William Henkel, Esquire, United States marshal, as aforesaid, in the said proceeding claiming to so restrain your petitioner by color of the pretended authority of the said warrants of arrest and the said remands thereunder, and pending the decision of the said Circuit Judge, as aforesaid.

10. Your petitioner is informed and verily believes that, notwithstanding the facts as above alleged, the said marshal, on the 13th day of August, 1900, placed upon each of said warrants an endorsement and certificate in which he, the said marshal, stated and certified (among other things) as follows: 'And I further certify that the within named Charles F. W. Neely is not and has not been detained by me by virtue of this warrant, and the same has not been executed, and I have made no return of the same.'"

Record, pp. 2–3.

The petition in this case also contains the following additional allegation:

> "XIII.—That your petitioner is convinced that it would be unwise and prejudicial to his interests to defer the making of this application until the issuance of a final order of extradition herein, for the reason that, as your petitioner is informed and verily believes, the United States Government authorities have made arrangements for the placing of the petitioner on board a Government transport or other vessel for immediate transportation to Cuba as soon after the issuance of such an order as may be, and in such prompt manner, and under such circumstances, as will prevent, and are intended to prevent, your petitioner from making an application for a writ of *habeas corpus* at that time; and your petitioner verily believes that unless he makes the same before said order is issued he will be absolutely deprived of the benefit of such relief, and of all opportunity to secure a review of the constitutional questions herein presented."
>
> *Ibid*, p. 8.

In other respects the record in this case is (*mutatis mutandis*) practically the same as that in No. 387.

The purpose of the allegations regarding the Circuit Judge's remand of the appellant was to demonstrate beyond all controversy the fact that the appellant was actually detained and restrained under the warrants in the extradition proceeding.

The purpose of the subsequent averment was to show the necessity of prompt action to preserve the appellant's legal rights.

We do not regard these allegations as in any way changing or affecting the situation. They were inserted merely that the real facts might appear of record.

Upon the grounds urged in our brief in No. 387 we submit that the order of the CircuitCourt of August

20, 1900, should also be reversed, and the cause remanded, with directions to discharge the appellant from custody under the warrants in the extradition proceeding.

Respectfully submitted,

JOHN D. LINDSAY,
Counsel for the Appellant.